

1 **(3) ACTIVE DAMS.** The operator shall, at least monthly, inspect active dams and
2 record the findings in the mining waste site operating log. The operator shall record
3 at least all of the following findings:

4 (a) Condition of vegetation on the dam and within 50 feet from the outside base.

5 (b) Piezometric levels within the mass of the dam.

6 (c) Condition of soil surfaces on the top and slopes of the dam and within 50 feet
7 from the outside base.

8 (d) Condition of drainage ditches near the base of the dam.

9 (e) Liquid surface level and amount of freeboard.

10 (f) Condition of spillways, conduits, and water level control structures.

11 **(4) INACTIVE DAMS.** The operator shall inspect inactive dams quarterly and
12 record the findings in the mining waste site operating log. The operator shall record
13 at least all of the following findings:

14 (a) Condition of soil surfaces on the top and slopes of the dam and within 50 feet
15 from the outside base.

16 (b) Piezometric levels within the mass of the dam if that instrumentation has
17 been determined to be necessary or is required in the long-term care provisions of
18 the mining waste site feasibility study and plan of operation.

19 (c) Condition of spillways, conduits, and water level control structures.

20 **(5) DEFECTIVE CONDITIONS OF DAMS POSING RISK OF ADVERSE IMPACT.** When a
21 defective condition that poses a significant risk of adverse impact to the environment
22 is found during an inspection of a dam, the operator shall ensure that it is recorded
23 and corrected at the earliest practicable time. At the earliest practicable time, the
24 operator shall make a written report to the department of the condition and the
25 actions proposed and taken for its correction. Within 5 business days of receipt of a

1 written report, the department may confirm the correction of the condition and
2 specify any necessary additional corrective action. An operator shall consider any
3 of the following items as indicating a condition that requires prompt investigation
4 and that may require corrective action:

5 (a) Seepage on the outer face of the dam accompanied by boils, sand cones, or
6 deltas.

7 (b) Silt accumulations, boils, deltas, or cones in the drainage ditches at the base
8 of the dam.

9 (c) Cracking of soil surface on the top or either face of the dam.

10 (d) Bulging of the outside face of the dam.

11 (e) Seepage, damp areas, or boils in the vicinity of, or erosion around, a conduit
12 through the dam.

13 (f) Any shrinkage of the top or faces of the dam.

14 **(6) POTENTIAL DEFECTS OF DAMS.** All of the following conditions indicate
15 potential defects and the operator shall closely check them on subsequent
16 inspections for an active dam and conduct an intermediate inspection if they exist
17 for an inactive dam:

18 (a) Patches of overgrown vegetation on the outside face or close to the base of
19 the dam.

20 (b) Surface erosion, gullyng, or wave erosion on the inside of the dam.

21 (c) Surface erosion, gullyng, or damp areas on the outside of the dam, including
22 the berm and the area within 50 feet from the outside base.

23 (d) Erosion below any conduit.

24 (e) Wet areas or soggy soil on the outside of, or in natural soil below, the dam.

SECTION 101

1 **(7) RECORD KEEPING RELATED TO DAMS.** (a) The operator shall retain all records
2 relating to dam monitoring, analytical, and verification activities and data,
3 including all original strip chart recordings and instrumentation, calibration, and
4 maintenance records, until termination of operator responsibility, except to the
5 extent that copies of those records have previously been provided to the department.

6 (b) The operator shall maintain in a permanent file all of the following
7 construction records pertaining to any dam in case they are needed for future
8 reference:

- 9 1. Aerial photos of the construction site before construction.
- 10 2. Construction drawings and modifications of the drawings.
- 11 3. Construction specifications and modifications of the specifications.
- 12 4. Results of all soil tests on foundations and fill materials.
- 13 5. Logs of borings and engineering geology reports.
- 14 6. Copies of construction progress inspections pertinent to core trench, toe
15 drain, internal drains, and other significant phases of the structure including, at the
16 option of the operator, photographs of various structural items.
- 17 7. Aerial photos of the entire dam taken within 90 days after all construction
18 is completed.
- 19 8. A description of and justification for all deviations or variances from the
20 construction plans and specifications.

21 **(8) RESPONSES TO UNPLANNED EVENTS.** If a mining waste site has an accidental
22 or emergency discharge, a fire, an explosion, or other unplanned or unpredicted
23 event that is likely to damage human health or the environment, the operator shall
24 follow the procedures set forth in the contingency plan under s. 295.51 (6) (f) and

1 shall report the incident to the department and to county, town, and tribal
2 governmental agencies immediately after the operator has discovered the event.

3 (9) ANNUAL REPORT. The operator shall submit to the department an annual
4 summary report concerning the mining waste site containing all of the following:

5 (a) Statistical summaries of annual and cumulative data.

6 (b) A comparison of the summaries under par. (a) to mining waste
7 characterization, leachate characterizations, effluent predictions, and baseline
8 water quality and background water quality data as contained in the approved
9 mining waste site feasibility study and plan of operation.

10 (c) The results of verification procedures and a presentation of the error
11 associated with each parameter reported.

12 (d) Information from monitoring wells that have not been affected, including
13 a discussion of whether the baseline values should be modified due to natural
14 variability and what the new values should be.

15 (10) APPLICABILITY. This section does not apply to a surface mine that is
16 backfilled with mining waste.

17 **295.64 Mining site monitoring; general.** (1) GENERAL. The department,
18 as a condition of a mining permit, shall require the operator to perform adequate
19 monitoring of environmental changes during the course of the mining and for the
20 additional period of time that is necessary to satisfactorily complete reclamation and
21 completely release the operator from any bonds or other security required. The
22 department may monitor environmental changes concurrently with the operator
23 and for an additional period after the security is released.

24 (2) ANALYSES. (a) The department shall review baseline water quality data
25 with respect to groundwater and monitoring data associated with the mine, mining

1 waste sites, and sites for the disposal of wastes that are not mining wastes at the time
2 of each review of the mining permit or reclamation plan under s. 295.63 (3) and when
3 the operator requests a modification of the mining permit or reclamation plan.

4 (b) An operator shall have bacteriological analyses of water samples and all
5 radiological analyses associated with the mining site performed by the state
6 laboratory of hygiene or at a laboratory certified or approved by the department of
7 health services. An operator shall have other laboratory tests the results of which
8 are submitted to the department under this subchapter performed by a laboratory
9 certified or registered under s. 299.11, except that this requirement does not apply
10 to any of the following:

- 11 1. Physical testing of soil.
- 12 2. Air quality tests.
- 13 3. Tests for hydrogen ion concentration (pH).
- 14 4. Tests for chlorine residual.
- 15 5. Tests for temperature.

16 **295.643 Mining waste site monitoring.** (1) GENERAL. The department may
17 require the monitoring of groundwater, surface water, leachate, or other physical
18 features associated with a mining waste site.

19 (2) PHYSICAL FEATURES. The department may require the monitoring of air
20 quality, berms, embankments, vegetation growth, and drainage control structures
21 associated with the mining waste site. The department may require monitoring of
22 other chemical or biological conditions, if the department determines that the
23 monitoring is necessary to assess the impact of the mining waste site on critical
24 aquatic and terrestrial ecosystems.

1 **(3) MONITORING WELLS AND OTHER DEVICES.** (a) The department shall require
2 the installation of groundwater monitoring wells at a mining waste site. The
3 department may require installation of leachate monitoring wells, lysimeters,
4 moisture probes, and similar devices and associated water quality sampling and
5 analysis programs to detect the effects of leachate on groundwater.

6 (b) The department shall determine the required number of groundwater
7 monitoring wells based on the size of the mining waste site, the design of the mining
8 waste site, the types of mining waste, and the hydrologic and geologic setting of the
9 mining waste site. The department shall ensure that the number of wells is adequate
10 to yield samples representative of the groundwater quality both up gradient and
11 down gradient of the mining waste site.

12 (c) An operator shall construct all monitoring wells in accordance with ch. NR
13 141, Wis. Adm. Code, and in such a manner as to prevent, to the extent practicable,
14 the exchange of water between aquifers.

15 **(4) DESTRUCTION OF MONITORING DEVICES.** (a) If for any reason a monitoring well
16 or other monitoring device associated with a mining waste site is destroyed or
17 otherwise fails to function properly, the operator shall notify the department in
18 writing within 5 days of discovering the destruction or malfunction.

19 (b) The operator shall either restore the monitoring well or other device or
20 properly abandon it and replace it with a functioning device within 60 days of
21 notifying the department under par. (a) unless the department notifies the operator
22 otherwise in writing within 30 days of receiving notice from the operator.

23 **(5) SAMPLING OTHER WELLS.** The department may require an operator to sample
24 public or private wells as part of a regular monitoring program or to determine the
25 extent of groundwater contamination associated with a mining waste site. If the

1 owner of a well does not authorize access for sampling, the operator shall promptly
2 notify the department.

3 (6) REQUIRED MONITORING AND ANALYSIS. (a) An operator shall monitor
4 groundwater at locations identified in the waste site feasibility study and plan of
5 operation on a quarterly basis, during March, June, September, and December,
6 unless the department agrees to an alternate schedule. The department may base
7 an alternate schedule on the hydrogeologic system's characteristics, such as flow
8 velocity and stratigraphy, and on fluctuations in quality as determined through
9 background water quality or baseline water quality sampling and mining waste
10 type. The operator shall analyze for the parameters listed in the approved waste site
11 feasibility study and plan of operation.

12 (b) An operator shall use the methods for groundwater and surface water
13 sample collection, preservation, and analysis that are specified in the approved
14 mining waste site facility study and plan of operation.

15 (7) WATER ELEVATION MEASUREMENTS. The operator shall make water elevation
16 measurements on a quarterly basis.

17 (8) OPERATIONS REPORT. The department may require an operator to submit an
18 operations report to assess the effectiveness and environmental acceptability of
19 mining waste site operations. The operator may include in the report a discussion
20 of confinement of the active fill area and an analysis of leachate and other
21 monitoring, surface water control and erosion control, revegetation, settlement,
22 volume of the mining waste site utilized, leachate quantity and quality, slope
23 stability, equipment performance, volume and type of waste disposed of, and other
24 relevant parameters.

1 (9) REPORTS OF MONITORING DATA. The operator shall forward to the department,
2 within 60 days after sampling, 3 copies of the monitoring data required by this
3 section to be collected during each quarter.

4 **295.645 Groundwater quality, monitoring, and response. (1)**

5 DEFINITIONS. In this section:

6 (a) "Alternative concentration limit" means the concentration of a substance
7 in groundwater established by the department to replace a groundwater quality
8 standard when the department grants an exemption.

9 (b) "Statistically significantly different" means an amount of change
10 determined by the use of statistical tests for measuring significance at the 95 percent
11 confidence level.

12 (2) DESIGN MANAGEMENT ZONE. (a) Notwithstanding the rule-making authority
13 in s. 160.21 (2) and except as provided under par. (b), for the purposes of ch. 160, the
14 horizontal distance to the boundary of the design management zone for a mining
15 operation is 1,200 feet from the limits of the engineered structures of the mining
16 waste site, including any wastewater and sludge storage or treatment lagoons, the
17 edge of the mine, and the adjacent mine mill and ferrous mineral processing facilities ✓
18 or at the boundary of the property owned or leased by the applicant, whichever *Insert 155-18*
19 distance is less.

20 (b) When issuing or modifying a mining permit or issuing or reissuing any other
21 approval, the department may expand the design management zone by a horizontal
22 distance of up to an additional 1,200 feet in any direction as provided in this
23 paragraph, but not beyond the boundary of the property owned or leased by the ✓
24 applicant. *Insert 155-24* The department may not expand the design management zone unless the
25 applicant demonstrates all of the following:

SECTION 101

1 1. That preventive action limits and enforcement standards or alternative
2 concentration limits cannot be met at the boundary of the design management zone
3 if it is not expanded.

4 2. That preventive action limits and enforcement standards or alternative
5 concentration limits will be met at the boundary of the expanded design
6 management zone.

7 (c) Notwithstanding the rule-making authority in s. 160.21 (2), for the
8 purposes of ch. 160, the vertical distance to the boundary of the design management
9 zone for a mining site, including any mining waste site, extends no deeper than 1,000
10 feet into the Precambrian bedrock or than the final depth of the mining excavation,
11 whichever is greater.

12 **(3) POINT OF STANDARDS APPLICATION.** (a) Any point at which groundwater is
13 monitored is a point of standards application to determine whether a preventive
14 action limit or an alternative concentration limit to a preventive action limit has been
15 attained or exceeded for an activity regulated under a mining permit or another
16 approval related to the mining operation. Any of the following is a point of standards
17 application to determine whether an enforcement standard or an alternative
18 concentration limit to an enforcement standard has been attained or exceeded for an
19 activity regulated under a mining permit or another approval related to the mining
20 operation:

21 1. Any point of present groundwater use.

22 2. Any point beyond the boundary of the property on which the activity is
23 conducted, subject to par. (b).

24 3. Any point that is within the boundary of the property on which the activity
25 is conducted but is beyond the design management zone, subject to par. (b).

1 (b) No point at a depth of greater than 1,000 feet into the Precambrian bedrock
2 or than the final depth of the mining excavation, whichever is greater, is a point of
3 standards application under this subsection.

4 (c) Section 160.21 (2) does not apply to an activity regulated under this
5 subchapter.

6 **(4) CHANGE IN GROUNDWATER QUALITY.** If the analysis of samples collected
7 through monitoring indicates that the quality of groundwater is statistically
8 significantly different from either baseline water quality or background water
9 quality and the evaluation of the data shows a reasonable probability that without
10 intervention groundwater quality standards or alternative concentration limits will
11 be attained or exceeded, the operator shall do all of the following:

12 (a) Notify the department within 10 days after the operator receives the results
13 of the analysis of the samples.

14 (b) Determine, if possible, the cause of the difference in water quality, such as
15 a spill, a design failure, or an improper operational procedure.

16 (c) Determine the extent of groundwater contamination or the potential for
17 groundwater contamination.

18 (d) Implement the applicable portions of the approved contingency plan.

19 **(5) RESPONSE CONCERNING PREVENTIVE ACTION LIMITS.** In accordance with s. NR
20 140.24 (1) to (5), Wis. Adm. Code, the department shall evaluate the range of
21 responses proposed by the operator when a preventive action limit or an alternative
22 concentration limit to a preventive action limit is attained or exceeded and the
23 analysis of samples indicates that the quality of groundwater is statistically
24 significantly different from either baseline water quality or background water
25 quality at a point of standards application. In designating the appropriate response,

1 the department shall evaluate the operator's proposed range of responses, including
2 any alternate responses to those identified in s. NR 140.24, Wis. Adm. Code. For any
3 alternate responses, the department shall consider the technical and economic
4 feasibility of alternate responses, the practicality of stopping the further release of
5 the substance, and the risks and benefits of continued mining operations. The
6 department shall designate the appropriate response, except that, notwithstanding
7 s. 160.21 (3) and the rule-making authority under s. 160.21 (1), the department may
8 not prohibit a practice or activity or require closure and abandonment of a mining
9 waste site, including any wastewater and sludge storage or treatment lagoon, unless
10 it has followed the procedures in s. 295.78 and satisfies the requirements of s. 160.23
11 (4) and (6). The department may determine that no response is necessary and that
12 an exemption is not required when the requirements of s. NR 140.24 (5) (a) or (b), Wis.
13 Adm. Code are met.

14 (6) RESPONSE CONCERNING ENFORCEMENT STANDARDS. (a) In accordance with s.
15 NR 140.26 (1) and (2), Wis. Adm. Code, the department shall evaluate the range of
16 responses proposed by the operator based on the responses listed in Table 6 of s. NR
17 140.26, Wis. Adm. Code, when an enforcement standard or an alternative
18 concentration limit to an enforcement standard is attained or exceeded and the
19 analysis of samples indicates that the quality of groundwater is statistically
20 significantly different from either baseline water quality or background water
21 quality at a point of standards application. In designating the appropriate response,
22 the department shall evaluate the operator's proposed range of responses against
23 those identified in Table 6 of s. NR 140.26, Wis. Adm. Code. The department shall
24 designate the appropriate response, except that, notwithstanding ss. 160.21 (3) and
25 160.25 (1) (a) and the rule-making authority under s. 160.21 (1), the department may

1 not prohibit a practice or activity or require closure and abandonment of a mining
2 waste site, including any wastewater and sludge storage or treatment lagoon, unless
3 it has followed the procedures in s. 295.78 and all of the following apply:

4 1. The department bases its decision upon reliable test data.

5 2. The department determines, to a reasonable certainty, by the greater weight
6 of the credible evidence, that no other remedial action would prevent the violation
7 of the enforcement standard at the point of standards application.

8 3. The department establishes the basis for the boundary and duration of the
9 prohibition.

10 4. The department ensures that any prohibition imposed is reasonably related
11 in time and scope to maintaining compliance with the enforcement standard at the
12 point of standards application.

13 5. If the substance involved is naturally occurring, unless the substance
14 involved is carcinogenic, teratogenic, or mutagenic in humans, the department
15 considers the existence of the background concentration of the substance in
16 evaluating response options to the noncompliance with the enforcement standard or
17 alternative concentration limit for that substance and determines that the proposed
18 prohibition will result in the protection of or substantial improvement in
19 groundwater quality notwithstanding the background concentrations of the
20 substance.

21 (b) The department may only require a remedial action to be taken if the
22 remedial action is reasonably related in time and scope to the substance, activity, or
23 practice that caused the enforcement standard or alternative concentration limit to
24 an enforcement standard to be attained or exceeded and the quality of groundwater

1 to be statistically significantly different from either baseline water quality or
2 background water quality at the point of standards application.

3 (c) If nitrates or any substance of welfare concern attains or exceeds an
4 enforcement standard and if the analysis of samples indicates that the quality of
5 groundwater is statistically significantly different from either baseline or
6 background water quality, then the department shall evaluate whether the
7 enforcement standard was attained or exceeded in whole or in part due to high
8 background water quality concentrations of the substance and whether the
9 additional concentrations represent a public welfare concern before it designates the
10 appropriate response and, notwithstanding ss. 160.21 (3) and 160.25 (1) (a) and the
11 rule-making authority under s. 160.21 (1), the department may not prohibit a
12 practice or activity or require closure and abandonment of a mining waste site,
13 including any wastewater and sludge storage or treatment lagoon, unless it has
14 followed the procedures in s. 295.78 and par. (a) 1. to 4. apply.

15 (d) If compliance with an enforcement standard is achieved at a point of
16 standards application, then sub. (5) applies.

17 **(6m)** MANDATORY INTERVENTION BOUNDARY FOR MINING WASTE SITE AND MINE. (a)
18 Except as provided under par. (am), the horizontal distance to the mandatory
19 intervention boundary for a mining waste site is 300 feet from the outer waste
20 boundary or the outer edge of the excavation, unless the boundary of the design
21 management zone is within 600 feet of the outer waste boundary or the outer edge
22 of the excavation, in which case the mandatory intervention boundary is one-half
23 the distance from the outer waste boundary or the outer edge of the excavation to the
24 boundary of the design management zone.

1 (am) The department may reduce the mandatory intervention boundary under
2 par. (a) by a horizontal distance of up to 150 feet if the department determines that
3 the reduction is necessary to adequately identify and respond to potential
4 groundwater quality issues.

5 (b) An operator shall monitor groundwater quality at locations approved by the
6 department along the mandatory intervention boundary, except for any portion of
7 the mandatory intervention boundary that is within another mandatory
8 intervention boundary, and within the mandatory intervention boundary. When
9 approving locations for monitoring, the department shall ensure that duplicative
10 monitoring is not required within overlapping mandatory intervention boundaries.

11 (c) 1. Notwithstanding sub. (5), if a preventive action limit or an enforcement
12 standard has been exceeded beyond the mandatory intervention boundary, the
13 department shall require a response in accordance with s. NR 140.24, Wis. Adm.
14 Code, except that s. NR 140.24 (5), Wis. Adm. Code, does not apply.

15 2. If sampling results indicate that an enforcement standard or a preventive
16 action limit has been exceeded within, but not beyond, the mandatory intervention
17 boundary and a comparison of sampling results to the results of modeling indicates
18 that the sampling results are consistent with the design and expected performance
19 of the mining waste site, the operator may recommend a no response action, and the
20 department may approve a no response action if that is authorized under s. NR
21 140.24 (5), Wis. Adm. Code.

22 (7) ENVIRONMENTAL ANALYSIS NOT REQUIRED. An action under sub. (5) or (6) with
23 respect to a specific site does not constitute a major state action under s. 1.11 (2).

24 (8) EXEMPTIONS TO GROUNDWATER QUALITY STANDARDS. When issuing or
25 modifying a mining permit or issuing or reissuing any other approval, the

1 department may grant an exemption from a groundwater quality standard and
2 establish an alternative concentration limit to a groundwater quality standard.

3 (9) APPLICABILITY OF OTHER LAW. Chapter NR 140, Wis Adm. Code, applies to
4 mining operations and mining sites, including mining waste sites, only to the extent
5 that it does not conflict with this section.

6 **295.65 Successors.** (1) When one operator succeeds to the interest of another
7 in an uncompleted mining operation by sale, assignment, lease, or otherwise, the
8 department shall release the first operator from the duties imposed upon the first
9 operator by this subchapter as to the mining operation and transfer the mining
10 permit and any approvals under ss. 295.60, 295.605, and 295.61 to the successor
11 operator if all of the following apply:

12 (a) The successor operator agrees to comply with the requirements of this
13 subchapter.

14 (b) The successor operator discloses whether it has forfeited any performance
15 security because of noncompliance with any mining laws within the previous 10
16 years, posts any bond or other security required under s. 295.59, and assumes all
17 responsibilities of all applicable approvals granted to the predecessor operator.

18 (2) The department is not required to prepare an environmental impact
19 statement or an environmental assessment for the purposes of this section.

20 **295.66 Cessation of mining or reclamation.** If there is a cessation of
21 mining or reclamation for 30 days or more that is not set forth in either the mining
22 plan or the reclamation plan, the operator shall notify the department of the
23 cessation within 48 hours of the cessation of mining and shall begin stabilization of
24 the mining site. The department may require the operator to provide technical,
25 engineering, and any other information that the operator believes shows that its

1 actions to stabilize the mining site are adequate. If the department determines, after
2 reviewing the information provided by the operator, that the proposed stabilization
3 of the mining site will result in a substantial adverse impact to the environment, the
4 department shall order the operator to begin additional measures to protect the
5 environment, including, if the cessation is reasonably anticipated to extend for a
6 protracted period of time, reclamation according to the reclamation plan or part of
7 the reclamation plan. Usual and regular shutdown of operations on weekends, for
8 maintenance or repair of equipment or facilities, or for other customary reasons do
9 not constitute a cessation of mining.

10 **295.67 Determination of abandonment of mining.** (1) Except as provided
11 in sub. (2), abandonment of mining occurs if there is a cessation of mining, not set
12 forth in an operator's mining plan or reclamation plan or by any other sufficient
13 written or constructive notice, extending for more than 6 consecutive months.

14 (2) Abandonment of mining does not occur if all of the following apply:

15 (a) The cessation of mining is due either to labor strikes or to unforeseen
16 developments such as adverse market conditions.

17 (b) The cessation of mining does not continue beyond the time, not to exceed
18 5 years, specified by the department.

19 (c) The mining site is maintained in an environmentally stable manner during
20 the cessation of mining.

21 (d) The reclamation of the mining site continues according to the reclamation
22 plan during the cessation of mining to the extent practicable.

23 **295.68 Certificates of completion and release of security.** (1) Upon the
24 petition of the operator, but not less than 4 years after notification to the department
25 by the operator of the completion of the reclamation plan or not less than one year

1 after notification to the department by the operator of the completion of the
2 reclamation plan as to a portion of the mining site, if the department finds that the
3 operator has completed reclamation of any portion of the mining site in accordance
4 with the reclamation plan and this subchapter, the department shall issue a
5 certificate of completion setting forth a description of the area reclaimed and a
6 statement that the operator has fulfilled its duties under the reclamation plan as to
7 that area.

8 (2) Upon the issuance of any certificate of completion under sub. (1) for any
9 portion of the mining site, but not for the entire mining site, the department shall
10 allow the operator to reduce the amount of the bond or other security provided under
11 s. 295.59 (1) to an amount equal to the estimated cost of reclamation of the portion
12 of the mining site that is disturbed or for which reclamation has been completed but
13 no certificate of completion has been issued.

14 (3) Upon issuance of a certificate or certificates of completion of reclamation
15 for the entire mining site, the department shall require the operator to maintain a
16 bond or other security under s. 295.59 (1) equal to at least 10 percent of the cost to
17 the state of reclamation of the entire mining site, except that if the mining site in the
18 mining plan is less than 10 acres, the department may release the bond or other
19 security after issuance of the certificate of completion for the entire mining site.

20 (4) After 10 years after the issuance of a certificate or certificates of completion
21 for the entire mining site, the department shall release the remaining bond or other
22 security provided under s. 295.59 (1) if the department finds that the reclamation
23 plan has been complied with.

24 **295.69 Termination of proof of financial responsibility for long-term**
25 **care of mining waste site. (1)** One year after closure, and annually thereafter

1 until the department terminates the obligation to maintain proof of financial
2 responsibility for long-term care of a mining waste site under sub. (2) (c), an operator
3 who has carried out all necessary long-term care during the preceding year, may
4 apply to the department for a reduction in the amount of the proof of financial
5 responsibility provided under s. 295.59 (2m) equal to the costs of long-term care for
6 that year. The operator shall provide an itemized list of costs incurred. If the
7 department determines that the costs incurred are in accordance with the long-term
8 care requirements in the approved waste site feasibility study and plan of operation
9 and that adequate funds exist to complete required long-term care for the remainder
10 of the 40-year period on which the amount of the proof of financial responsibility was
11 originally determined, the department shall authorize in writing a reduction in the
12 amount of proof of financial responsibility provided. The department shall make its
13 determinations within 90 days of an application.

14 (2) (a) An operator may apply to the department for termination of its
15 obligation to maintain proof of financial responsibility for long-term care of the
16 mining waste site under s. 295.59 (2m) at any time after the mining waste site has
17 been closed for 20 years by submitting an application that demonstrates that
18 continuation of the obligation to maintain proof of financial responsibility for
19 long-term care is not necessary for adequate protection of public health or the
20 environment. The burden is on the operator to prove by a preponderance of the
21 evidence that continuation of the obligation to maintain proof of financial
22 responsibility for long-term care is not necessary for adequate protection of public
23 health or the environment.

24 (b) Within 30 days of receiving an application under par. (a), the department
25 shall provide notice to the public of the application for termination of the obligation

SECTION 101

date of the publication of

1 to maintain proof of financial responsibility for long-term care. In the notice, the
 2 department shall invite the submission of written comments by any person on the
 3 application within 30 days of the day on which the notice is published. The
 4 department shall provide the notice by publishing a class 1 notice under ch. 985 in
 5 the official newspaper designated under s. 985.04 or 985.05 or, if none exists, in a
 6 newspaper likely to give notice in the area of the mining waste site. The department
 7 shall also send the notice to the operator.

INS.
166-b
A

INS. 166-bB

date of the publication of

8 (c) Within 120 days of the day on which the department publishes the notice
 9 under par. (b), the department shall determine either that proof of financial
 10 responsibility for long-term care of the mining waste site is no longer required, in
 11 which case the applicant is relieved of the responsibility of providing proof of
 12 financial responsibility for long-term care, or that proof of financial responsibility
 13 for long-term care of the mining waste site is still required, in which case the
 14 applicant may not submit another application under par. (a) until at least 5 years
 15 have elapsed since the previous application.

16 **295.695 Inspections by the department.** (1) Any duly authorized officer,
 17 employee, or representative of the department who has received the safety training
 18 under 30 CFR 48.31 may enter and inspect any property, premises, or place on or at
 19 which any mining operation or facility is located or is being constructed or installed
 20 at any reasonable time for the purpose of ascertaining the state of compliance with
 21 this subchapter and the provisions of chs. 281, 283, 285, 289, 291, 292, and 299 and
 22 rules promulgated under those chapters that are applicable to the mining operation.
 23 No person may refuse entry or access to any authorized representative of the
 24 department who requests entry for purposes of inspection, and who presents
 25 appropriate credentials.

1 (2) No person may obstruct, hamper, or interfere with any inspection
2 authorized in sub. (1).

3 (3) The department shall furnish to the operator a written report on any
4 inspection setting forth all observations, relevant information, and data that relate
5 to compliance status.

6 **295.73 Fees.** (1) (a) Except as provided in par. (b), an applicant for a mining
7 permit is not required to pay any application or filing fee for any approval other than
8 a mining permit, notwithstanding any fee required under ch. 23, 29, 30, ³⁶169, 281,
9 283, 285, 289, or 291, or rules promulgated under those chapters.

10 (b) An applicant for a mining permit shall pay any fee required under s. 281.343

11 (3) (c) 1.

12 (3) (a) The department shall assess an applicant a fee equal to its costs, other
13 than costs of a contract under par. (d), for evaluating the mining project, including
14 the costs for consultants retained by the department to evaluate the application for
15 the mining permit and the application for any other approval, or \$2,000,000,
16 whichever is less.

17 (b) The applicant shall pay the fees under par. (a) as follows:

18 1. One hundred thousand dollars shall be paid at the time that the bulk
19 sampling plan is filed under s. 295.45 or at the time that the notice of the intention
20 to file a mining permit application is filed, whichever is first.

21 2. Two hundred fifty thousand dollars when the department provides cost
22 information demonstrating that the payment under subd. 1. has been fully allocated
23 against actual costs.

SECTION 101

1 3. Two hundred fifty thousand dollars when the department provides cost
2 information demonstrating that the payment under subd. 2. has been fully allocated
3 against actual costs.

4 4. Two hundred fifty thousand dollars when the department provides cost
5 information demonstrating that the payment under subd. 3. has been fully allocated
6 against actual costs.

7 5. Two hundred fifty thousand dollars when the department provides cost
8 information demonstrating that the payment under subd. 4. has been fully allocated
9 against actual costs.

10 6. Two hundred fifty thousand dollars when the department provides cost
11 information demonstrating that the payment under subd. 5. has been fully allocated
12 against actual costs.

13 7. Two hundred fifty thousand dollars when the department provides cost
14 information demonstrating that the payment under subd. 6. has been fully allocated
15 against actual costs.

16 8. Two hundred fifty thousand dollars when the department provides cost
17 information demonstrating that the payment under subd. 7. has been fully allocated
18 against actual costs.

19 9. One hundred fifty thousand dollars when the department provides cost
20 information demonstrating that the payment under subd. 8. has been fully allocated
21 against actual costs.

22 (c) After the department approves or denies the application for a mining permit
23 or, if the applicant withdraws the application for a mining permit, after the applicant
24 withdraws the application, the department shall refund to the applicant any amount

1 paid by the applicant under par. (a) but not fully allocated against the department's
2 actual costs.

3 (d) In addition to the fees under par. (a), if the department contracts under s.
4 295.53 (1) with a consultant to assist in preparation of an environmental impact
5 statement and awards the contract on the basis of competitive bids, the applicant
6 shall pay the full costs as provided in the contract.

7 (4) Subchapter VI of ch. 289 does not apply to mining waste disposed of in a
8 mining waste site covered by a mining permit, except that an operator shall pay the
9 fees specified in ss. 289.63 (4), 289.64 (3), and 289.67 (1) (d).

10 **295.75 Effect of other laws.** (1) Except as provided in sub. (2), if there is a
11 conflict between a provision in this subchapter and a provision in ch. 23, 29, 30, ³¹160,
12 169, 281, 283, 285, 289, or 291 or in a rule promulgated under one of those chapters,
13 the provision in this subchapter controls.

14 (2) (a) If there is a conflict between a provision in this subchapter and a
15 provision in s. 281.343, the provision in s. 281.343 controls.

16 (b) If there is a conflict between a provision in this subchapter and a provision
17 in s. 281.346, the provision in s. 281.346 controls, except as provided in s. 295.57 (9).

X

18 **295.77 Review.** (1) ^{Insert 169-18} A person is entitled to a contested case hearing on a
19 ^{Insert 169-19} decision by the department ~~under this subchapter~~ or on a decision by the department
20 relating to the issuance of an approval ^{only if the person is entitled to a contested case}
21 hearing under s. 227.42 and the person ^{Insert 169-21} is aggrieved by one of the following:

- (a) A decision under s. 295.58 to grant or deny a mining permit or a decision to grant or deny a related approval.
- (b) A final decision on the environmental impact statement for a proposed mine.

(2) A person is only entitled to a contested case hearing under sub. (1) if the person requests the hearing within 30 days after the department issues the decision to grant or deny the mining permit, except that if the request concerns an approval on which the department issues a decision, as authorized under s. 295.57 (8) (b) or (c), after the deadline under s. 295.57 (8) (a), a person may request a contested case hearing on that decision within 30 days after the department issues that decision.

Insert
170-67

~~(3) (a)~~ The hearing examiner presiding over a contested case hearing under this

(8) ^{sub} section shall issue a final decision on the case no more than 150 days after the department issues the decision to grant or deny the mining permit, except that if the contested case concerns an approval on which the department issues a decision, as authorized under s. 295.57 (8) (b) or (c), after the deadline under s. 295.57 (8) (a), the hearing examiner shall issue a final decision on the case no more than 150 days after the department issues the decision on that approval.

(14) (b) If the hearing examiner does not issue a final decision by the deadline under ^{2.} ~~par. (a)~~ ^{subd. 1.} the decision of the department being reviewed by the hearing examiner is affirmed.

(c) ^{① Restriction on orders.} The hearing examiner may not issue an order prohibiting activity ^{that is} authorized under a decision of the department being reviewed in the contested case hearing.

(20) (4) (a) A person seeking judicial review of the decision in a contested case hearing under this ^{sub} section shall comply with the requirements for service and filing in s. 227.53 (1) (a) ^{and} ~~and~~

(24) (b) A person seeking judicial review of a decision under this subchapter shall commence the action ^{Insert 170-24-A} no more than 30 days after ~~the decision is filed~~ ^{Insert 170-24-B}

or the decision to approve or deny the amended mining plan's reclamation plan or mining waste site feasibility study and plan of operation

no 9 (pull up)

Insert
170-24-C

1 **295.78 Mining and reclamation; orders.** (1) (a) If the department finds a
2 violation of law or any unapproved deviation from the mining plan, reclamation plan,
3 or mining waste site feasibility study and plan of operation at a mining site under
4 a mining permit, the department shall do one of the following:

5 1. Issue an order requiring the operator to comply with the law, mining plan,
6 reclamation plan, or mining waste site feasibility study and plan of operation within
7 a specified time.

8 2. Require the alleged violator to appear before the department for a hearing
9 and answer the department's charges.

10 3. Request the department of justice to initiate action under s. 295.79.

11 (b) Any order issued under par. (a) 1. following a hearing takes effect
12 immediately. Any other order takes effect 10 days after the date the order is served,
13 unless the person named in the order requests in writing a hearing before the
14 department within the 10-day period.

15 (c) If no hearing on an order issued under par. (a) 1. was held and if the
16 department receives a request for a hearing within 10 days after the date the order
17 is served, the department shall provide due notice and hold a hearing. If after the
18 hearing the department finds that no violation has occurred, it shall rescind its order.

19 (d) If an operator fails to comply with an order issued under par. (a) 1. within
20 the time for compliance specified in the order, the department shall suspend the
21 mining permit until the operator fully complies with the order, except that if the
22 operator seeks review of the order under s. 295.77⁽³⁾, mining may continue until the
23 final disposition of the action, except as provided under sub. (4). ✓

1 (e) The department shall inform the department of justice of a suspension
2 under par. (d) within 14 days. After receiving notice of a suspension, the department
3 of justice may commence an action under s. 295.79.

4 (2) If reclamation of a mining site is not proceeding in accordance with the
5 reclamation plan and the operator has not begun to rectify deficiencies within the
6 time specified in an order, or if the reclamation is not properly completed in
7 conformance with the reclamation plan within one year after completion or
8 abandonment of mining on any portion of the mining site, unless because of acts of
9 God, such as adverse weather affecting grading, planting, and growing conditions,
10 the department, with the staff, equipment, and material under its control, or by
11 contract with others, shall take the actions that are necessary for the reclamation of
12 mined areas. The operator is liable for the cost to the state of reclamation conducted
13 under this subsection.

14 (3) The department shall cancel all other mining permits held by an operator
15 who refuses to reclaim a mining site in compliance with the reclamation plan after
16 the completion of mining or after the cancellation of a mining permit. The
17 department may not issue any mining permit for that mining site or any other
18 mining site in this state to an operator who refused to reclaim the mining site in
19 compliance with the reclamation plan.

20 (4) At any time that the department determines that the continuance of mining
21 constitutes an immediate and substantial threat to public health and safety or the
22 environment, the department may request the department of justice to institute an
23 action in circuit court of the county in which the mine is located for a restraining
24 order or injunction or other appropriate remedy to stop mining until the immediate
25 and substantial threat is eliminated.

1 (5) Section 281.346 (7m) does not apply to a water withdrawal associated with
2 a mining operation for which a mining permit has been issued.

3 **295.79 Enforcement; penalties.** (1) The department of justice shall enforce
4 this subchapter and any order issued under this subchapter. The circuit court of the
5 county where the violation occurred has jurisdiction to enforce this subchapter or any
6 orders issued under this subchapter, by injunction or other appropriate relief.

7 (2) (a) Any person who authorizes or engages in mining without a mining
8 permit and written authorization to mine under s. 295.59 (3) shall forfeit all profits
9 obtained from those illegal activities and not more than \$5,000 for each day during
10 which the mine was in operation.

11 (b) A person to whom par. (a) applies is also liable to the department for the full
12 cost of reclaiming the affected area of land and any damages caused by the mining.

13 (c) If the violator of par. (a) is a corporation, limited liability company,
14 partnership, or association, any officer, director, member, manager, or partner who
15 knowingly authorizes, supervises, or contracts for mining is also subject to the
16 penalties in this subsection.

17 (3) Any person who makes or causes to be made in an application or report
18 required by this subchapter a statement known to the person to be false or
19 misleading in any material respect or who refuses to submit information required by
20 a mining permit or by this subchapter may be fined not less than \$1,000 nor more
21 than \$5,000. If the false or misleading statement is material to the issuance of the
22 mining permit and the mining permit would not have been issued had the false or
23 misleading statement not been made, the court may revoke the mining permit. If any
24 violation under this subsection is repeated the court may revoke the mining permit.

1 (4) (a) Any person who commits a violation of this subchapter or any permit or
2 order issued under this subchapter, except for the violations enumerated in subs. (2)
3 and (3), shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each
4 day of continued violation is a separate offense, except that no forfeiture may be
5 imposed during the time that continued mining is authorized under s. 295.63 (3).
6 While an order is suspended, stayed, or enjoined, this penalty does not accrue.

7 (b) In addition to the penalties provided under par. (a), the court may award
8 the department of justice the reasonable and necessary expenses of the investigation
9 and prosecution of the violation, including attorney fees. The department of justice
10 shall deposit in the state treasury for deposit into the general fund all moneys that
11 the court awards to the department or the state under this paragraph. These moneys
12 shall be credited to the appropriation account under s. 20.455 (1) (gh).

13 (5) Any person having an interest that is or may be adversely affected may
14 intervene as a matter of right, in any enforcement action brought under this section.

15 **SECTION 102.** 299.85 (7) (a) 2. and 4. of the statutes are amended to read:

16 299.85 (7) (a) 2. Notwithstanding minimum or maximum forfeitures specified
17 in ss. 29.314 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969,
18 29.971 (1) (a), (1m) (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and
19 (3), 30.49 (1) (a) and (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2),
20 285.41 (7), 285.57 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97,
21 289.96 (2) and (3) (a), 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a),
22 295.19 (3) (a) and (b) 1., 295.37 (2), 295.79 (2) and (4), 299.15 (4), 299.51 (5), 299.53
23 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97 (1), if a regulated entity that qualifies
24 under sub. (2) for participation in the Environmental Compliance Audit Program
25 corrects violations that it discloses in a report that meets the requirements of sub.

1 (3) within 90 days after the department receives the report that meets the
2 requirements of sub. (3), the regulated entity may not be required to forfeit more than
3 \$500 for each violation, regardless of the number of days during which the violation
4 continues.

5 4. Notwithstanding minimum or maximum forfeitures specified in ss. 29.314
6 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969, 29.971 (1) (a), (1m)
7 (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and (3), 30.49 (1) (a) and
8 (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2), 285.41 (7), 285.57
9 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97, 289.96 (2) and (3) (a),
10 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a), 295.19 (3) (a) and (b)
11 1., 295.37 (2), 295.79 (2) and (4), 299.15 (4), 299.51 (5), 299.53 (4) (c) 1., 299.62 (3) (a)
12 and (c), and 299.97 (1), if the department approves a compliance schedule under sub.
13 (6) and the regulated entity corrects the violations according to the compliance
14 schedule, the regulated entity may not be required to forfeit more than \$500 for each
15 violation, regardless of the number of days during which the violation continues.

16 **SECTION 103.** 299.95 of the statutes is amended to read:

17 **299.95 Enforcement; duty of department of justice; expenses.** The
18 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except
19 ss. 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan approvals,
20 permits, and water quality certifications of the department, except those
21 promulgated or issued under ss. 285.57, 285.59, and 299.64 and except as provided
22 in ss. 285.86 and 299.85 (7) (am). The Except as provided in s. 295.79 (1), the circuit
23 court for Dane county or for any other county where a violation occurred in whole or
24 in part has jurisdiction to enforce chs. 281 to 285 and 289 to 295 or this chapter or
25 the rule, special order, license, plan approval, permit, or certification by injunctional

1 and other relief appropriate for enforcement. For purposes of this proceeding where
2 chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order, license, plan
3 approval, permit or certification prohibits in whole or in part any pollution, a
4 violation is considered a public nuisance. The department of natural resources may
5 enter into agreements with the department of justice to assist with the
6 administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid
7 to the department of justice under these agreements shall be credited to the
8 appropriation account under s. 20.455 (1) (k).

9 **SECTION 104.** 323.60 (1) (gm) of the statutes is created to read:

10 323.60 (1) (gm) "Minerals" mean unbeneficiated metallic ore but does not
11 include mineral aggregates such as stone, sand, and gravel.

12 **SECTION 105.** 323.60 (5) (d) 3. of the statutes is amended to read:

13 323.60 (5) (d) 3. All facilities with 10 or more employees in major group
14 classifications 10 to 13 in the standard industrial classification manual, 1987
15 edition, published by the U.S. office of management and budget, at which a toxic
16 chemical is used at or above an applicable threshold quantity, except that compliance
17 with the toxic chemical release form requirements under this subdivision is not
18 required for the placement of a toxic chemical in a storage or disposal site or facility
19 that is located at a facility with a permit under ch. 293 or a mining permit under
20 subch. III of ch. 295 if the toxic chemical consists of or is contained in merchantable
21 by-products, as defined in s. 293.01 (7) or 295.41 (25), minerals as defined in s. 293.01
22 (8), or refuse, as defined in s. 293.01 (25) or 295.41 (41).

23 **SECTION 106.** 710.02 (2) (d) of the statutes is amended to read:

24 710.02 (2) (d) An exploration mining lease as defined in s. 107.001 (1) and land
25 used for mining and associated activities under chs. 293 and 295.

1 SECTION 107. Nonstatutory provisions.

2 (1) RULES.

a.r. X

3 (a) The department of natural resources shall submit in proposed form rules
4 revising chapters NR 130, 131, 132, and 182, Wisconsin Administrative Code, that
5 are in effect on the effective date of this paragraph and revising any other rules
6 promulgated under section 293.13 (1) (a) of the statutes that are in effect on the
7 effective date of this paragraph to the legislative council staff under section 227.15
8 (1) of the statutes no later than the first day of the 5th month beginning after the
9 effective date of this paragraph. The proposed revised rules shall clarify that
10 chapters NR 130, 131, 132, and 182, Wisconsin Administrative Code, and any other
11 rules promulgated under section 293.13 (1) (a) of the statutes do not apply to ferrous
12 metallic mining.

promulgate

13 (b) The department of natural resources shall submit in proposed form rules
14 revising chapters NR 500 to 555 and 660 to 679, Wisconsin Administrative Code, that
15 are in effect on the effective date of this paragraph and revising any other rules
16 promulgated under sections 289.05 and 289.06 (1) of the statutes that are in effect
17 on the effective date of this paragraph to the legislative council staff under section
18 227.15 (1) of the statutes no later than the first day of the 5th month beginning after
19 the effective date of this paragraph. The department shall revise the rules in
20 chapters NR 500 to 555 and 660 to 679, Wisconsin Administrative Code, and any
21 other rules promulgated under sections 289.05 and 289.06 (1) of the statutes so that
22 they are consistent with subchapter III of chapter 295, of the statutes, as created by
23 this act.

promulgate

a.r. Y

the rules

24 (c) The department of natural resources shall submit, to the legislative council
25 staff under section 227.15 (1) of the statutes, no later than the first day of the 5th

SECTION 107

9 / promulgate

1 month beginning after the effective date of this paragraph, in proposed form rules
2 revising any rules of the department that are in effect on the effective date of this
3 paragraph, in addition to the rules under paragraphs (a) and (b), that provide
4 exemptions for nonferrous mining or associated activities to provide the same
5 exemptions for ferrous mining and associated activities.

6 (d) Notwithstanding section 227.137 (2) of the statutes, the department of
7 natural resources is not required to prepare an economic impact report for the
8 revised rules required under paragraphs (a) to (c). Notwithstanding section 227.135
9 (2) of the statutes, the department of natural resources is not required to present the
10 statement of the scope of the rules required under paragraphs (a) to (c) to the
11 governor for approval.

12 (END)

Insert 178-11

Note